

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ELLEN BETZ,	:
	:
Plaintiff,	:
	:
v.	: Case No. 2:15-cv-00727-GJP
	: (Hon. Gerald J. Pappert)
	:
	:
TEMPLE HEALTH SYSTEMS,	:
	:
Defendant.	:

TEMPLE UNIVERSITY HEALTH SYSTEMS, INC.'S PRETRIAL MEMORANDUM

Defendant Temple University Health Systems, Inc. (“Temple”) hereby submits the following pretrial memorandum pursuant to Federal Rule of Civil Procedure 26(a)(3), Local Rule of Civil Procedure 16(c), and the Court’s Policies and Procedures.

I. BRIEF STATEMENT OF THE NATURE OF THE ACTION AND BASIS ON WHICH JURISDICTION OF THE COURT IS INVOKED

This matter currently centers upon Plaintiff Ellen Betz’s (“Betz”) claims of retaliation under Title VII of the Civil Rights Act of 1964 and the Pennsylvania Human Relations Act as well as claims for interference and retaliation under the Family and Medical Leave Act (“FMLA”). Betz also has asserted common-law claims for defamation and tortious interference with contractual relations.

This Court has jurisdiction based on federal question jurisdiction, 28 U.S.C. § 1331 and supplemental jurisdiction, 28 U.S.C. § 1337.

II. COUNTERSTATEMENT OF FACTS

Temple is a deeply rooted, integral part of Philadelphia healthcare. Jeanes Hospital, a part of Temple, was founded in 1928 and provides modern facilities for patient care in a warm,

home-like setting that is more conducive to recovery than traditional health care institutions.

Jeanes became a member of Temple in 1996.

Betz worked within the Temple family for roughly 11 years. She initially worked for Northeastern Hospital, which was also a part of Temple, beginning in 2003. When Northeastern closed in 2009, Betz became a Registered Nurse at Jeanes. In early 2013, Betz worked on Floor 4A at Jeanes. Certain nurses on that floor (unit) within Jeanes complained about the performance of Tara Beissel (“Beissel”), another nurse with whom Betz was friendly. Temple investigated the complaints against Beissel, and Temple terminated Beissel in February 2013. When that termination occurred, Betz was outraged and sought revenge on the complaining nurses. Betz began writing letters to Temple’s CEO, Dr. Larry Kaiser, complaining about the other nurses. Betz searched for, and found, Facebook photos from June 2012, nearly a year earlier, to sully the character of her fellow nurses. Temple’s Employee Relations Manager, Brenna Woods, investigated Betz’s complaints. Betz frequently contacted Woods during the investigation. Betz repeatedly memorialized a variety of concerns about her co-workers. However, she never contemporaneously complained of or mentioned sexual harassment, sexually offensive conduct occurring on a daily basis, or that Temple had interfered with her statutory leave or retaliated against her in any way.

Shortly after Beissel’s termination, Temple transferred Betz from her temporary assignment (Floor 4A) to another unit (Floor 5A) on a full-time basis. As a result, she only occasionally worked with the 4A staff about whom she complained. During this time, however, Betz made several medical errors. Her supervisor at the time, who addressed the errors directly with Betz, knew very little about Betz’s issues with the other nurses on her previous floor.

In December 2013 – months after she first wrote to Dr. Kaiser – and, while working in yet another unit, Betz committed a fourth and serious medical error. On this occasion, Betz lied about it and attempted to cover the error up as well as the medical records concerning the error. Temple conducted a thorough investigation, interviewed several witnesses, and concluded that Betz could no longer work for Jeanes. Knowing that her employment was in jeopardy because of the errors and cover up, Betz filed a Charge with the Equal Employment Opportunity Commission, claiming gender discrimination and retaliation. Temple nonetheless finalized its investigation and terminated Betz in February 2014. Betz then filed this lawsuit, which currently contains claims for retaliation, violation of the FMLA, defamation, and tortious interference.

III. MONETARY DAMAGES: N/A

IV. WITNESSES

Temple intends to call the following witnesses at trial:

1. Plaintiff Ellen Betz

Address: c/o Daniel J. Horowitz, Swartz Swidler, 1101 Kings Highway North, Suite 402, Cherry Hill, NJ 08034.

2. Brenna Woods, Human Resources Director, Rothman Institute (Former Mgr. of Compliance & Employee Relations)

Address: 925 Chestnut Street, 5th Floor, Rothman Institute at Jefferson, Philadelphia, PA 19107.

3. Danielle Meinel, Nurse Manager

Address: c/o Jason K. Roberts, Esq., Rubin, Fortunato & Harbison P.C. 10 S. Leopard Rd, Paoli, PA 19301.

4. Dawn O'Connor, Nurse Manager

Address: c/o Jason K. Roberts, Esq., Rubin, Fortunato & Harbison P.C. 10 S. Leopard Rd, Paoli, PA 19301.

5. Marie Gardner, Nurse Manager

Address: c/o Jason K. Roberts, Esq., Rubin, Fortunato & Harbison P.C. 10 S. Leopard Rd, Paoli, PA 19301.

6. Jacqueline Nardi, Nurse Manager

Address: c/o Jason K. Roberts, Esq., Rubin, Fortunato & Harbison P.C. 10 S. Leopard Rd, Paoli, PA 19301.

7. Linda Krause, Nurse Manager

Address: c/o Jason K. Roberts, Esq., Rubin, Fortunato & Harbison P.C. 10 S. Leopard Rd, Paoli, PA 19301.

8. John Lavery, Nurse Recruiter

Address: c/o Jason K. Roberts, Esq., Rubin, Fortunato & Harbison P.C. 10 S. Leopard Rd, Paoli, PA 19301.

Temple reserves the right to call any liability, damages, or expert witnesses identified by Betz in her pretrial memorandum. Temple also reserves the right to call any necessary rebuttal witnesses.

V. EXHIBITS

Temple expects to offer the following documents as exhibits at trial:

Exhibit No.	Description	Date	Bates No.
D-1	Ellen Betz Resume	Undated	TU EB 0017
D-2	Ellen Betz Employment Application	April 24, 2009	TU EB 0002-0007
D-3	Betz Employee Handbook Acknowledgement Page	June 11, 2009	TU EB 0062

D-4	Workplace Harassment Training Acknowledgement Form	June 15, 2009	TU EB 0067
D-5	Temple University Health System Employee Handbook	Undated	TU EB 0346-0385
D-6	Betz Offer Letter	May 13, 2009	TU EB 0001
D-7	Betz Salary Increases	Undated	TU EB 0033, 0043, 0046,0398-0399
D-8	Betz Transfer from 2C to 4A	December 4, 2012	TU EB 0045
D-9	Betz Transfer from 4A to 5A	February 27, 2013	TU EB 0051
D-10	Betz March 2013 Correspondence to Dr. Kaiser	March 11, 2013	TU EB 0769-0773
D-11	Temple Response to Betz	March 11, 2013	TU EB 0449
D-12	Betz March 2013 Correspondence to Dr. Kaiser	March 13, 2013	TU EB 0570
D-13	Correspondence between Brenna Woods and Ellen Betz	March 2013	TU EB 0836-0837
D-14	Correspondence between Brenna Woods and Maria Solitro re: Betz	April 1, 2013	TU EB 0484
D-15	Betz April 2013 Correspondence to Brenna Woods	April 3, 2013	TU EB 0884-0885
D-16	Betz April Correspondence to Brenna Woods re: voicemail	April 4, 2013	TU EB 0886-0887
D-17	Facebook Photos from June 2012	June 2012	TU EB 0940-0942
D-18	Facebook Comments from March 1, 2013	March 1, 2013	TU EB 0311
D-19	Betz July 2013 Correspondence to Dr. Kaiser	July 25, 2013	TU EB 0976-0977
D-20	Brenna Woods Correspondence to Caryl Mahoney re: Betz	July-August 2013	TU EB 0983-0985
D-21	Brenna Woods Summary and Recommendations	June 5, 2013	TU EB 0934-0939
D-22	Brenna Woods September 2013 Correspondence to Betz	September 5, 2013	PEB 0119
D-23	Betz Request to Work on 4A on Christmas	December 25, 2013	TU EB 1426
D-24	Email Concerning Betz Threats in April 2013	April 1, 2013	TU EB 0491-0492
D-25	Temple's Corrective Action Policy	February 4, 2008	TU EB 0190-0195
D-26	Betz's Acknowledgment of Corrective Action Policy	June 11, 2009	TU EB 0063

D-27	Brenna Woods Notes re: First Medical Error	August 16, 2013	TU EB 0609
D-28	Betz Corrective Action/Discipline Report for Second Medical Error	May 29, 2013	TU EB 0052-0055
D-29	Betz Corrective Action/Discipline Report for Third Medical Error	September 20, 2013	TU EB 0537-0555
D-30	October 2013 Grievance Decision	October 24, 2013	PEB 0125
D-31	Union Newsletter	December 6, 2013	TU EB 0304-0305
D-32	Internal Correspondence re: Betz Transfer Attempt	September 2013	TU EB 1086-1088
D-33	Betz Corrective Action/Discipline Report for Final Medical Error	February 21, 2014	TU EB 0134
D-34	Statement from Charli Vasso	Undated	TU EB 0202
D-35	Temple's High Risk and High Alert Medications Policy	November 2013	TU EB 0184-0189
D-36	Patient 1 Medical Chart	Undated	TU EB 0719-0728
D-37	Patient 2 Medical Chart	Undated	TU EB 0729-0732
D-38	Brenna Woods Investigation Questions	January 16, 2014	TU EB 0633-0635
D-39	Brenna Woods Statement Comparison	Undated	TU EB 0767-0768
D-40	Brenna Woods Summary and Recommendations	February 13, 2014	TU EB 0630-0632
D-41	Betz January 2014 Correspondence to Dr. Kaiser and internal e-mails	January 2014	TU EB 0647-0651
D-42	Betz January 25, 2014	January 25, 2014	TU EB 0660
D-43	Betz February 3, 2014 Correspondence to Brenna Woods	February 3, 2014	TU EB 0661
D-44	Betz First FMLA Request	September 2012	TU EB 0265-0270
D-45	Temple Approval of First FMLA Request	September 27, 2012	TU EB 0264
D-46	Betz Second FMLA Request	June 2013	TU EB 0272-0279
D-47	Temple Approval of Second FMLA Request	June 28, 2013	TU EB 0271
D-48	Betz Third FMLA Request	January 2014	TU EB 0282-0290
D-49	Temple Approval of Third FMLA Request	January 20, 2014	TU EB 0280
D-50	Betz January 2014 Correspondence re: EEOC	January 13, 2014	TU EB 0642-644

	Charge		
D-51	Betz First EEOC Charge	January 20, 2014	PEB 0001-0002
D-52	Betz Second EEOC Charge	July 7, 2014	PEB 0003-0004
D-53	Betz Third EEOC Charge	December 10, 2014	PEB 0005-0006
D-54	Betz Sick Note	January 20, 2014	PEB 0145
D-55	Betz's Mother's Complaint	January 21, 2014	TU EB 0291-0315
D-56	Article re: Lawsuit Against Betz by Bensalem School District	December 23, 1999	TU EB 1423-1425
D-57	Brenna Woods Investigative File	Multiple Dates	Varying Bates
D-58	Ellen Betz Deposition Transcript	October 1, 2015	N/A
D-59	Jacqueline Nardi Deposition Transcript	October 6, 2015	N/A
D-60	Dawn O'Connor Deposition Transcript	October 6, 2015	N/A
D-61	Linda Krause Deposition Transcript	October 7, 2015	N/A
D-62	Danielle Meinel Deposition Transcript	October 7, 2015	N/A
D-63	John Lavery Deposition Transcript	October 8, 2015	N/A
D-64	Marie Gardner Deposition Transcript	October 8, 2015	N/A
D-65	Brenna Woods Deposition Transcript	October 9, 2015	N/A
D-66	Correspondence from Betz Lawyer, Scott Fegley Esq.	September 19, 2014	TU EB 1089-1092

Temple reserves the right to introduce any exhibits that are identified by Betz in her pretrial memorandum. Temple also reserves the right to introduce any documents for cross-examination or rebuttal purposes.

VI. ESTIMATED NUMBER OF DAYS REQUIRED FOR TRIAL

Temple expects that the trial of this matter will last approximately four (4) full days.

VII. STIPULATIONS

The parties will continue to work toward stipulations regarding all issues, including evidentiary matters.

VIII. STATEMENT OF OBJECTIONS

A. Affidavits

1. The Affidavits Are Inadmissible Hearsay

The affidavits of Susan Sommers and Bernadette Appiott constitute inadmissible hearsay. No exceptions apply that would allow these documents to be admitted, and they should therefore be excluded. Federal Rule of Evidence 801 (c) defines as hearsay “a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.” Rule 802 provides that hearsay is generally inadmissible.

Betz is offering the affiants’ out of court statements for the truth of the matter asserted. As such, they are hearsay and should be excluded from trial. To sustain her burden, Betz should offer Ms. Sommers and Ms. Appiott as witnesses and have them testify at trial in person subject to cross examination. The affidavits cannot stand in their place as it does not provide Temple the opportunity to test the veracity of the statements.

2. The Affidavits are Riddled With Infirmitiess and Are Unreliable

Not only are the affidavits hearsay, but they are also legally deficient and should not be considered. First, these affiants were not disinterested, random employers that called Temple seeking a job reference. Both affiants had a significant relationship with Betz. The notion that these “affidavits” came from true “third-parties” transcends the bounds of legitimate advocacy. One of the “affidavits” came from Betz’s sister. That affidavit can be seen as self-serving. See Ramirez v. Verizon Communs., Inc., Civil Action No. 13-6000, 2015 U.S. Dist. LEXIS 26473, *10 (S.D.N.Y. Feb. 27, 2015) (noting a self-serving affidavit from a sibling). The other “affidavit” came from a former acquaintance of Betz that she knew from Northeastern Hospital.

Temple is entitled to examine the affiants because (1) Temple's established policy has been to provide only dates of employment in response to a written reference request; (2) five different witnesses confirmed this policy; (3) inquiries from outside parties seeking a reference would not be routed to Lavery; (4) Lavery, who has been in a Human Resources role since the late 1980s, denied saying to anyone the things attributed to him and vehemently denied ever talking to these two individual affiants; (5) Lavery recruits nurses to Temple and would not field reference calls; (6) the affidavits talk about a lawsuit that had not even been filed yet; (7) Lavery would not have been privy to Betz's medical errors or the reason of her termination; and (8) Lavery had no knowledge that Betz filed EEOC Charges or eventually filed a lawsuit at the time of the "affidavits." Thus, the affidavits should be excluded from evidence.

B. Testimony of Witnesses Without Firsthand Knowledge

Betz has identified four individuals from her former union as witnesses in this matter: Colleen Dunn, Angela Cleghorn, Debbie Bilse, and Mark Warshaw. Temple will move that they be prohibited from testifying because, although they were interviewed as part of the investigation surrounding Betz's medical errors, the witnesses have no connection to, or direct knowledge of, the actual events. While the Employee Relations Manager considered their opinions, she gave them the appropriate weight based on their non-involvement in Betz's medical errors. They should not be allowed to testify as they do not meet the requirements of Rule 701 of the Federal Rules of Evidence.

IX. DESIGNATION OF DEPOSITION TESTIMONY

Temple does not wish to designate any deposition testimony at this time as all witnesses will be in attendance at trial. Temple reserves the right to revisit the issue in the event circumstances change.

Dated: January 12, 2016

Respectfully submitted,

/s/ Jason K. Roberts

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Attorneys for Defendant Temple University Health System Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of *Temple's Pretrial Memorandum* was served via electronic notice and first-class mail as follows:

Daniel Horowitz, Esquire
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1101 Kings Highway North
Suite 402
Cherry Hill, NJ 08034

Attorneys for Plaintiff Ellen Betz

Dated: January 12, 2016

/s/ Jason K. Roberts
Jason K. Roberts, Esquire